IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1402 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANDLAL KARSHANBHAI BHINGRADIYA

Versus

NAJIRBHAI FALJIBHAI MAKWANA

Appearance:

1. First Appeal No. 1402 of 2002

MR DC SEJPAL for Petitioner No. 1

MR LR PATHAN for Respondent No. 1-2

MR MA SAPA for Respondent No. 1-2

MR DAKSHESH MEHTA for Respondent No. 3

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the order dated February 28, 2002, passed by the Motor Accident Claims Tribunal (Aux.), Bhavnagar, on an application (Exh.5) under Section 140 of the Act in M.A.C.P No.303 of 2001, rejecting the application filed by the claimant under Section 140 of the Act on the ground that the claimant has not suffered permanent partial disability as defined under Section 142 of the Act.

2. During the pendency of the appeal at the admission stage, by order dated September 16, 2002, the Court (Coram: K.M. Mehta, J.) had directed the appellant to approach the Orthopedic Surgeon of Sir T. Hospital, Bhavnagar, to assess the permanent partial disablement suffered by the appellant during the course of the accident. Accordingly, the Orthopedic Surgeon of Sir T. Hospital, Bhavnagar, issued certificate dated August 19, 2002, assessing the permanent partial disablement at 10 to 15%. The certificate issued by the Orthopedic Surgeon of Sir T. Hospital, Bhavnagar, is challenged by the Insurance Company by filing an affidavit-in-reply.

3. Heard the learned advocates for the parties.

4. The application filed by the appellant (original claimant) came to be rejected by the Tribunal mainly on the ground that there was no permanent partial disablement suffered by the appellant in the vehicular accident. However, in view of the certificate issued by the Orthopedic Surgeon of Sir T. Hospital, Bhavnagar, it becomes evident that the appellant suffered permanent partial disablement on the left knee which is assessed at 10 to 15%. In view of the certificate issued by the Orthopedic Surgeon of Sir T. Hospital, Bhavnagar, in my view, as other requirements have been fulfilled, the application filed by the appellant (original claimant) under Section 140 of the Act deserves to be allowed.

5. As a result of the foregoing discussion, this appeal is allowed with no order as to costs. The respondents shall deposit Rs.25,000/- along with interest at the rate of 9% per annum from the date of the application till realization, in the Tribunal, on the basis of 'no fault liability' as provided under Section 140 of the Act.

6. It is clarified that the award under Section 140

is in the nature of an interim award which is subject to adjustment against the final award, which may be passed in the main claim petition, being M.A.C.P. No.303 of 2001 pending before the Motor Accident Claims Tribunal (Aux.), Bhavnagar. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala reported in 2001 (4) JT 477.

7. The appellant (original claimant) shall, however, file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under this order shall be adjusted against the final award in the main claim petition.

8. On the said undertaking being filed, 50% of the amount awarded shall be permitted to be withdrawn by the appellant (original claimant) on his furnishing security to the satisfaction of the Tribunal. The rest of the amount shall be deposited in a cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

(M.H. Kadri, J.)

(swamy)